

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM: Monroe D. Kiar, Town Attorney, (954) 584-9770

SUBJECT: Resolution

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING AND RATIFYING THE STIPULATED AGREEMENT AND RESOLUTION OF CONFLICT BETWEEN FRANCIS MCDONOUGH AND THE TOWN OF DAVIE AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: Mr. Francis McDonough is the owner of the property which is the subject of this litigation. Prior to the litigation, Mr. Francis McDonough filed an Application with the Town of Davie seeking approval by the Davie Town Council of a Plat for the subject property located within the Town of Davie. The Davie Town Council at its meeting of February 4, 2004, approved the Plat subject to the condition that the Plaintiff dedicate a right-of-way for SW 58th Avenue. As a result, the Plaintiff initiated the present lawsuit against the Town seeking a Writ of Certiorari within the Broward County Circuit Courts and challenging the validity of the conditions placed upon the Plat by the Town. It is the belief of the Town and Francis McDonough that a settlement of the lawsuit will be mutually beneficial. The proposed Stipulated Agreement and Resolution of Conflict which is attached to the Resolution as Exhibit "A", and which is the result of settlement negotiations between the Town Attorney's Office and the attorney for the property owner is believed to meet the beneficial interest of both parties and will assist in resolving this dispute.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: None

RECOMMENDATION(S): Resolution is suitable for deliberation by the Town Council.

ATTACHMENTS: Resolution with Stipulated Agreement and Resolution of Conflict attached thereto as Exhibit "A"

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING AND RATIFYING THE STIPULATED AGREEMENT AND RESOLUTION OF CONFLICT BETWEEN FRANCIS MCDONOUGH AND THE TOWN OF DAVIE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, a proposed Stipulated Agreement and Resolution of Conflict between Francis McDonough and the Town of Davie is attached hereto as Exhibit “A”; and

WHEREAS, Francis McDonough is the owner of the property which is the subject of the litigation; and

WHEREAS, prior to the litigation, Francis McDonough filed an Application with the Town of Davie seeking approval by the Davie Town Council of a Plat for the subject property located within the Town of Davie; and

WHEREAS, the Town Council of the Town of Davie at its meeting of February 4, 2004, approved the Plat subject to the condition that the Plaintiff dedicate a right-of-way for SW 58th Avenue; and

WHEREAS, the Plaintiff initiated the present lawsuit against the Town, seeking a Writ of Certiorari within the Broward County Circuit Courts and challenging the validity of the conditions placed upon the Plat by the Town; and

WHEREAS, it is the belief of the Town and Francis McDonough that the Stipulated Agreement and Resolution of Conflict which is attached hereto as Exhibit “A”, meets the beneficial interest of both parties and will assist in resolving this dispute.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA,

SECTION 1. The Town Council hereby adopts and ratifies the Stipulated Agreement and Resolution of Conflict entered into between Francis McDonough and the Town of Davie which is attached hereto Exhibit “A”.

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2005

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2005

TOWN OF DAVIE

STIPULATED AGREEMENT AND RESOLUTION OF CONFLICT
FRANCIS MCDONOUGH v. TOWN OF DAVIE
CASE NUMBER: CACE 04-003915 (04)

ENTERED INTO BY AND BETWEEN
THE TOWN OF DAVE, Defendant, hereafter referred to as the
“TOWN”
AND
FRANCIS MCDONOUGH, Plaintiff

February 28, 2005

THE FOLLOWING CONDITIONS AND STATEMENTS ARE AGREED TO AND SHALL BE THE PREREQUISITES TO THE RESOLUTION OF CASE NUMBER: CACE 04-003915 (04).

WHEREAS, the Plaintiff, Mr. Francis McDonough is the owner of the property which is the subject of this litigation; and

WHEREAS, the Plaintiff, Francis McDonough filed an application with the Town of Davie seeking approval by the Davie Town Council of a Plat for the subject property, located within the Town of Davie; and

WHEREAS, the Town Council of the Town of Davie at its meeting of February 4, 2004, approved the Plat subject to the condition the Plaintiff dedicate a right-of-way for Southwest 58th Avenue; and

WHEREAS, the Plaintiff initiated the present lawsuit against the Town, seeking a Writ of Certiorari within the Broward County Circuit Courts and challenging the validity of the conditions placed upon the Plat by the Town; and

WHEREAS, a genuine dispute exists between the parties with regard to whether the conditions placed upon the Plaintiff's Plat by the Town are valid; and

WHEREAS, it is the belief of the TOWN and Mr. Francis McDonough that a settlement of the above referenced lawsuit will be mutually beneficial.

NOW THEREFORE, as a full settlement and resolution of the disputes between Mr. Francis McDonough and the Town of Davie and as a settlement of Case Number: CACE: 04-003915, the parties stipulate to the following provisions:

1. The parties hereby agree that a Perpetual Roadway Easement (“Easement”) shall be granted to the Town of Davie by Mr. Francis McDonough upon the “Easement Property” dedicated to the Town of Davie as a condition of the Town Council's approval of the Plat.

2. Mr. McDonough shall file an application with the Town for the approval of a Site Plan, indicating the relocation of any structures, objects and/or uses within the Easement Property inconsistent with the use of that property as a public roadway. The parties specifically acknowledge that a parking lot presently exists within a portion of the easement property and the Site Plan shall indicate the relocation of the parking lot to a site on the subject property outside of easement property. The road easement will provide that McDonough will maintain all rights to use the Easement Property until such time as the Town provides Mr. McDonough with written notice of the Town's intent to construct SW 58th Avenue as provided herein. McDonough will be given a reasonable time to obtain permits, construct a new parking lot with access to SW 58th Avenue and remove all structures and improvements within the Easement Property.
3. Immediately upon the approval of Mr. McDonough's Site Plan, the Town shall record its Easement within the Broward County Records and the Easement Property shall be deemed dedicated to the Town for the construction of a public roadway. It is hereby acknowledged that upon the Town's recordation of the Easement, Mr. McDonough shall have no further "private rights" to the Easement Property except as provided in paragraph 2 above and in the Easement.
4. Once the Town has recorded the Easement and Mr. McDonough receives notice from the Town that the Town is ready to construct roadway improvements on the property, Mr. McDonough shall relocate the parking lot to the site specified within his approved Site Plan and shall remove any and all other items, structures and/or objects located within the easement property.
5. In the event that the Plaintiff, Mr. McDonough enters into an agreement to assign any interest in the Easement Property either directly or indirectly to any other individual, person(s), group(s) and/or corporation(s) prior to the Town's recordation of the Easement, Mr. McDonough agrees to notify the Town of such agreement immediately upon the execution of the agreement.
6. It is specifically contemplated that this Agreement shall run with the land and shall be binding upon all heirs and/or assigns of the present owner of the property. Accordingly, any agreement entered into by Mr. McDonough to assign interest in the Easement Property to another party as indicated above shall specify that the assignee shall take interest in the Easement Property subject to the Town's Perpetual Roadway Easement.
7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event that any party brings suit for enforcement of the provisions of the Agreement, the venue of such suit shall be restricted to Broward County. All parties hereto waive the right to a jury trial with regard to any litigation
8. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and there are no other agreements, representations or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except through consent of all the parties and by an instrument signed by all the parties.

9. Effective Date. This Agreement shall become effective upon its execution by the parties to the Agreement. Upon the execution of this Agreement, the parties shall notify the court of this Agreement and shall terminate the lawsuit.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature; Mr. Francis McDonald, property owner and the Town of Davie through its Town Council, signing by and through its Mayor, authorized to execute same by Town Council action on ____ day of _____, 2005.

ATTEST:

TOWN OF DAVIE

Town Clerk

By _____
Mayor

Approved as to form:

____ day of _____, 2005

Town Attorney

WITNESSES:

FRANCIS MCDONOUGH

By _____

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____ day of _____, 2005

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